

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

|                           |   |                            |
|---------------------------|---|----------------------------|
| UNITED STATES OF AMERICA, | ) |                            |
|                           | ) | NOS. CR-07-2020-LRS-3      |
| Respondent,               | ) |                            |
|                           | ) |                            |
| -vs-                      | ) | ORDER DENYING PETITIONER'S |
|                           | ) | RULE 59(e) MOTION          |
| JOSE SANCHEZ-CARDENAS,    | ) |                            |
|                           | ) |                            |
| Petitioner.               | ) |                            |

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BEFORE THE COURT is Petitioner's Motion For Reconsideration Pursuant To Rule 59(e) of the Federal Rules of Civil Procedure, ECF No. 350, filed on May 24, 2012.

**I. BACKGROUND**

On November 13, 2009, this court entered its Order Denying Defendant's §2255 motion (ECF No. 299), which was amended on November 23, 2009 (ECF No. 300) to account for Petitioner's second §2255 motion, also filed on January 21, 2009. On January 11, 2010, Petitioner filed a motion for issuance of certificate of appealability (ECF No. 301). On March 1, 2010, this court entered an Order Denying Certificate of Appealability (ECF No. 305). On February 28, 2011, the Ninth Circuit Court of Appeals denied Petitioner's request for a certificate of appealability (ECF No. 329). On May 8, 2012, the Court entered an Order Denying Petitioner's Rule 60(b) Motion (ECF No. 349). Petitioner now seeks to have this Court

1 reconsider, pursuant to Rule 59(e), its decision regarding Petitioner's  
2 Rule 60(b) Motion. (ECF No. 350). The government did not respond to the  
3 instant motion.

## 4 II. DISCUSSION

5 Petitioner argues in his Rule 59(e) motion that " . . .the district  
6 court misapprehends *Padilla*, which provides an [sic] strong basis to set  
7 aside a previous § 2255 petition judgment because petitioner's argument that  
8 the district court failed to rule on his ineffective assistance claim does  
9 not challenge the merits of the district court's resolution of his § 2255  
10 petition, but only an alleged defect in the integrity of the earlier § 2255  
11 proceedings. Thus, his Rule 60(b) motion presented a "true" Rule 60(b) claim  
12 and should not have been construed as challenging the district court's  
13 resolution of the merits of the claim." ECF No. 350 at 2.

14 One of the purposes of Rule 59(e) is to provide district courts the  
15 opportunity to correct significant errors of fact or law that are brought to  
16 their immediate attention, and thus spare the parties and appellate courts  
17 the burden of unnecessary appeals. See *e.g. Charles v. Daley*, 799 F.2d 343,  
18 348 (7th Cir.1986); *Steigerwald v. Bradley*, 229 F.Supp.2d 445, 447  
19 (D.MD.2002). A motion to alter or amend judgement under Rule 59(e) of the  
20 Federal Rules of Criminal Procedure is essentially a motion for  
21 reconsideration. Rule 59(e) offers an "extraordinary remedy, to be used  
22 sparingly in the interests of finality and conservation of judicial  
23 resources." *Kona Enter., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th  
24 Cir.2000). The Ninth Circuit has consistently held that a motion brought  
25 pursuant to Rule 59(e) should only be granted in "highly unusual  
26 circumstances." *Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th

1 Cir.1999) (*citing School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9<sup>th</sup>  
2 Cir.1993)).

3       Petitioner also appears to argue that the Court was incorrect with its  
4 statement that his Rule 60(b) motion was not raised within a reasonable time.  
5 Petitioner argues the Court did not take into account his appeal process  
6 under §2253(c) after the challenged order was entered. Even if the Court  
7 were in error by its timeliness comment due to the appeal process, the court  
8 has explained that Petitioner argued grounds for ineffective assistance of  
9 counsel at great lengths in his §2255 petition, which the court thoroughly  
10 addressed in the Orders Denying Defendant's §2255 Motion (ECF Nos. 299, 300).

11       Petitioner's attempt to rehash his ineffective assistance of counsel  
12 claim is not an appropriate use of a Rule 59(e) motion. Petitioner has not  
13 raised any legitimate reasons for amending his judgment and simply makes  
14 conclusory statements that the Court was in error under *Padilla v. Kentucky*,  
15 130 S.Ct. 1473, 1480 (2010) and *Maples v. Thomas*, 132 S.Ct. 912, 922-27  
16 (2012). Rule 59(e) reads:

17       **Rule 59. New Trial; Altering or Amending a Judgment**

18       (e) Motion to Alter or Amend a Judgment.  
19       A motion to alter or amend a judgment must be filed no  
20 later than 28 days after the entry of the judgment.  
21 Fed.R.Civ.P. 59(e).

22       Rule 59(e) permits a district court to reconsider and amend a  
23 previous order. *Kona Enter., Inc. v. Estate of Bishop*, 229 F.3d 877, 890  
24 (9<sup>th</sup> Cir.2000). With his present arguments, Petitioner essentially seeks  
25 reconsideration of the merits of his Section 2255 Motion, although with  
26 the 28 day limitation in Rule 59(e), he is actually seeking to  
alter/amend the Court's Order Denying Petitioner's Rule 60(b) Motion (ECF

1 No. 349). Petitioner suggests the court did not understand that his  
2 counsel failed to apprise him of "sentencing consequences" of a guilty  
3 plea that led to a 10-year mandatory minimum. The Court recognized these  
4 issues, and expressly addressed them in the November 23, 2009 order (ECF  
5 No. 300). Additionally, Petitioner has set forth no new grounds in his  
6 motion that warrant reconsideration or vacation of the Court's prior  
7 ruling(s) pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.

8 This court has reviewed the record and concludes that Petitioner's  
9 filed pleading, styled as Motion for Reconsideration, under FRCP Rule  
10 59(e), must be denied. Accordingly,

11 **IT IS ORDERED** that:

12 1. Mr. Sanchez-Cardenas' Motion For Reconsideration Pursuant to  
13 Rule 59(e) of the Federal Rules of Civil Procedure," **ECF No. 350**, filed  
14 May 24, 2012, is respectfully **DENIED**.

15 2. The District Court Executive is directed to:

16 (a) File this Order; and

17 (b) Provide a copy to Petitioner **AND TO** the United  
18 States Attorney, Yakima, Washington.

19 **DATED** this 15th day of August, 2012.

20  
21 **s/Lonny R. Suko**

22 \_\_\_\_\_  
23 LONNY R. SUKO  
24 UNITED STATES DISTRICT JUDGE  
25  
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